

T.O.P.S.

RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

11 SEP 1986

- WHEREAS, The United States Civil Rights Commission has initiated a study purportedly to determine whether civil rights are being violated on Indian reservations; and
- WHEREAS, the Commission has developed a project design which proposes to take "an indepth look at Indian tribal justice systems by investigating allegations of denials of due process and equal protection under the Indian Civil Rights Act of 1968"; and
- WHEREAS, the alleged purpose of the investigation is to enable the Commission to assess the effectiveness of tribal courts in protecting the civil rights of individual Indians, and that the Commission has already completed one hearing in Rapid City, South Dakota and anticipates that an additional hearing will be held in Phoenix, Arizona as early as September, 1986, and that subsequent to said hearing the Commission will make recommendations to Congress in respect to tribal court jurisdiction over Indians and non-Indians; and
- WHEREAS, the Commission's investigation has been conducted without any advance word to tribal chairmen, the National Tribal Chairmens' Association, or the National Congress of American Indians, and lacks a systematic and proper empirical approach to insure the veracity of witnesses and to obtain a fair representation of the quality of justice administered by tribal courts; and
- WHEREAS, the Tribal Council is advised based upon information and belief that the Commission staff carefully screened witnesses who appeared before the Commission panel in South Dakota to produce witnesses hostile to tribal court jurisdiction and that equal time and attention was not allocated by the Commission to tribes supporting tribal court jurisdiction; and
- WHEREAS, Commission Chairman Pendleton is reportedly biased against tribal court jurisdiction and tribal sovereignty, and has reportedly referred to the trust status of Indian land as an impediment and that Indian land lying unproductive is useless; and

- WHEREAS, said views expressed by Mr. Pendleton indicate that the real purpose behind the quickly orchestrated commission investigation of tribal courts is to carry out the recommendations of the much criticized President's Commission's Report on Reservation Economies, which urges that tribal court jurisdiction over non-Indians be eliminated for the benefit of non-Indians doing business on reservations; and
- WHEREAS, the Commission's investigation in South Dakota has centered on the Rosebud and Cheyenne River Reservation, which is not representative of the experience of tribal courts in the state of Arizona; and
- WHEREAS, the White Mountain Apache Tribal Court has consistently provided a forum for Indians and non-Indians alike pursuant to the Indian Civil Rights Act of 1968, and is actively pursuing programs in the area of adult and juvenile diversion and victim-witness advocacy to further enhance the quality of justice on the Fort Apache Indian Reservation; and
- WHEREAS, the Commission, as an agency of the trustee United States Government, has the obligation to uphold the federal trust responsibility to Indians and to carry out said responsibilities in consideration of the government-to-government relationship between the federal and various tribal governments; and
- WHEREAS, various Indian tribes in Arizona have been contacted by Commission representatives regarding the proposed study, but it has become abundantly apparent that the basis for the Commission's investigation is based upon complaints of non-Indians and that the primary motivation for the investigation is to justify restriction or elimination of tribal court jurisdiction that Indian tribes presently exercise over non-Indians pursuant to guidelines established by U.S. v. Montana, Santa Clara Pueblo v. Martinez, and their progeny; and
- WHEREAS, the sovereignty of Indian tribes in matters concerning reservation self-government has been firmly established by the United States Supreme Court in such decisions as Santa Clara Pueblo v. Martinez, which held that tribal courts had the primary responsibility to interpret and enforce the Indian Civil Rights Act of 1968; and
- WHEREAS, Congress has enacted legislation and appropriated funds prior to and subsequent to the Santa Clara Pueblo v. Martinez decision for tribal courts, thereby reaffirming the confidence and policy of the Congress in enforcement of civil rights by Indian tribes; and


- WHEREAS, President Reagan's policy statement of 1983 reaffirmed the administration's commitment in support of tribal sovereignty, the trust responsibility of the United States, and the federal-tribal government-to-government relationship; and
- WHEREAS, individual Indian tribes have access to the most accurate information of any governmental commission in respect to civil rights issues affecting individual tribal members living on Indian reservations in the state of Arizona; and
- WHEREAS, the White Mountain Apache Tribe pursuant to a 638 contract with the Bureau of Indian Affairs, by contract and otherwise, provides a forum for the adjudication of important personal and property interests of Indians and non-Indians alike in conformance with the Indian Civil Rights Act of 1968; and
- WHEREAS, the Tribal Council is of the opinion that the United States Civil Rights Commission should instead devote its funding and energies to investigate on-going discriminatory practices against Indians and Indian tribes by non-Indian private and governmental entities in the area of employment, economic development, land and water rights, health and mental health care, and especially in the area of credit red lining and care of the mentally ill; and
- WHEREAS, the Tribal Council of the White Mountain Apache Tribe concludes based upon the investigation and information received to date and its knowledge of the administration of justice in tribal courts throughout Indian reservations in the state of Arizona that the trust relationship between the United States and tribal governments requires that Arizona tribes be given advance notice and opportunity for an appropriate hearing before the Commission undertakes a study of the civil rights of tribal members on Arizona Indian reservations; and
- WHEREAS, the Tribal Council further concludes that any investigation of compliance with the Indian Civil Rights Act should be conducted by the Bureau of Indian Affairs, the principle agent of the trustee United States, who has the primary responsibility to insure that tribal courts properly administer their 638 court contracts and that they comply with the Indian Civil Rights Act and other contractual provisions.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby demands that the U.S. Commission on Civil Rights consult with the affected Indian tribes in Arizona with respect to the scope and direction of any study of individual Indians and tribal courts on Indian reservations within the state prior to conducting any unstructured or selective hearing in Phoenix, Arizona in September 1986.

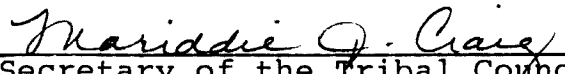
BE IT FURTHER RESOLVED by the Tribal Council that it hereby opposes any study of the quality of the administration of justice in the White Mountain Apache Tribal Court without prior consultation with and input from the White Mountain Apache Tribe, its police department, prosecutor, tribal judges and tribal attorney.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby directs that the Tribal Council Secretary forthwith distribute this resolution to members of the Arizona Congressional Delegation and appropriate members of the Senate and House committees on Indian affairs and that the Tribal Chairman request the assistance of the Secretary of the Interior in halting this biased and entirely one sided attempt to undermine a critical attribute of tribal sovereignty and self-government.

The foregoing resolution was on AUGUST 21, 1986, duly adopted by a vote of 10 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i) of the Amended Constitution and Bylaws of the Tribe, ratified by the Tribe June 27, 1958, and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984)



Chairman of the Tribal Council



Secretary of the Tribal Council

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FORT APACHE INDIAN
AGENCY
WHITERIVER, ARIZ.